UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/33
8 February 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in Rwanda submitted by the Special Representative, Mr. Michel Moussalli, pursuant to resolution 1998/69

GE.99-10889 (E)

CONTENTS

	Paragraphs	Page
Introduction	1	3
I. MISSIONS OF THE SPECIAL REPRESENTATIVE	2 - 5	3
II. OBSERVATIONS OF THE SPECIAL REPRESENTATIVE	6 - 66	4
A. Consequences and implications of the closure of the United Nations Human Rights Field Operation in Rwanda (HRFOR)	6 - 9	4
B. Steps toward the creation and effective functioning of an independent national human rights commission	10 - 16	5
C. Security conditions and human rights	17 - 26	6
D. Detention, the penitentiary system and human rights	27 - 31	9
E. The judicial system and human rights	32 - 52	10
F. Economic and social conditions	53 - 59	15
G. International cooperation and human rights	60 - 66	16
III. CONCLUSIONS AND RECOMMENDATIONS	67 - 91	17

Introduction

1. In its resolution 1998/69, the Commission on Human Rights decided to extend the Special Representative's mandate for a further year and requested him to report to the General Assembly at its fifty-third session and to the Commission at its fifty-fifth session. The Commission called for close consultation between the Special Representative and the Government of Rwanda regarding the functioning of the future national human rights commission. The present report, submitted in accordance with resolution 1998/69, is the fourth submitted by the Special Representative pursuant to his mandate.

I. MISSIONS OF THE SPECIAL REPRESENTATIVE

2. In pursuance of the objectives of his mandate, the Special Representative undertook three missions to Rwanda in 1998, the first in January, the second in June, and the third in August-September. In view of developments following the departure of the Human Rights Field Operation from Rwanda, especially in respect to events in the north-west of the country and the necessary measures to be taken for the setting up of the National Human Rights Commission, the Special Representative twice sent a Special Assistant to Rwanda. 1/ On his latest mission to Rwanda, from 11 to 23 January 1999, the Special Representative was accompanied and assisted by the Human Rights Research and Development Analyst seconded to him by the Danish Centre for Human Rights and by the Desk Officer of the Office of the High Commissioner for Human Rights. The Special Representative is very grateful for this support.

3. The Special Representative wishes to express his deep gratitude to the Government of the United Kingdom for providing support to his mandate, thanks to which he was able, in particular, to send a special assistant to Rwanda. He would also like to thank the United Nations Resident Coordinator and United Nations Development Programme (UNDP) Resident Representative in Rwanda, Mr. Stephen Browne, and his colleagues for the most helpful advice and support which they extended to him and his team.

4. In the preparation of the present report meetings were held with personalities and officials from various branches of the Government of Rwanda, 2/ with ambassadors and heads of diplomatic missions in Rwanda; with representatives of United Nations agencies; and with national and international non-governmental organizations dealing with human rights and related issues in Rwanda.

5. A visit to the north-western prefecture of Ruhengeri was arranged by the Minister of Gender, Family and Social Affairs and the Minister of Youth, Sports, Culture and Vocational Training. This visit to various sites and villages in the area proved to be most useful to the Special Representative and enabled him to have a direct perception of the situation of the population and of the realities on the ground.

II. OBSERVATIONS OF THE SPECIAL REPRESENTATIVE

A. Consequences and implications of the closure of the United Nations Human Rights Field Operation in Rwanda (HRFOR)

6. The main cause for the closure of the Operation on 28 July 1998 was the inability of the Office of the High Commissioner for Human Rights on the one hand, and the Government of Rwanda on the other, to reach an agreement on the issue of "monitoring" human rights in the country. It must be pointed out, however, that apart from this point, there was overall agreement between the two sides on all the other aspects of the HRFOR's mandate. Indeed, the Special Representative stated in his last report to the General Assembly on the situation of human rights in Rwanda (A/53/402, annex, para. 13) that the Government had appealed for more emphasis to be placed on capacity-building, technical cooperation, training and education. OHCHR, for its part, saw HRFOR's monitoring function as an indispensable component in assisting the Government to address problems, as a basis for dialogue to diagnose the needs, and as encouragement to the international community to provide the help necessary to do so (see ibid., para. 14 and A/52/486/Add.1/Rev.1, annex).

7. The withdrawal of HRFOR under circumstances where no national institution existed to continue the functions it had assumed thus caused great concern over the future of human rights in the country, both to the High Commissioner for Human Rights and to the entire international community. The Special Representative learned that the Government of Rwanda equally regretted that HRFOR had been withdrawn. This convergence of views was expressed quite clearly in the Rwandan Government's five-point human rights plan which was presented at the time of the negotiations which preceded the closure of the Field Operation. 3/

8. The assistance which was lost with the departure of HRFOR is candidly spelt out in an internal report of October 1997. That report, while acknowledging shortcomings in HRFOR's operational capacities, listed a number of the operation's achievements in areas such as training and support for national institutions, especially in the administration of justice, the penitentiary system, assistance to genocide survivors, and in human rights education and promotion. 4/ The Special Representative during his last two fact-finding missions was consistently given this message by all his interlocutors, regardless of whether they were from Government, NGOs, or ordinary members of civil society.

9. In this connection, it is fortunate and significant to note that, in her latest report on the situation of human rights in Rwanda to the General Assembly (A/53/367, annex, para. 17), the High Commissioner for Human Rights declared that her Office was "committed to pursuing a dialogue with the Government of Rwanda in connection with its longer-term human rights needs and to encouraging the emergence of a human rights culture as well as sustained development in the country". As for the Government of Rwanda, its readiness to reactivate collaboration with OHCHR has been amply conveyed to the Special Representative by persons at all levels, especially during his latest mission to Rwanda.

B. Steps toward the creation and effective functioning of an independent national human rights commission

10. The Special Representative noted with great satisfaction that on his advice and recommendation, and following the adoption of resolution 1998/69, the Rwandan authorities, who had initially set out to create the National Commission on Human Rights by presidential decree (Presidential Order No. 26/01 of 11 November 1997), decided to review this decree and to submit a new draft bill to the National Assembly regarding the establishment of the National Human Rights Commission as provided for in the Arusha Accords and as enshrined in the Basic Law of Rwanda. This should enhance its legitimacy in the eyes of civil society, its effectiveness and its independence (A/53/402, annex, para. 21). The draft bill was indeed submitted to the National Assembly during the Special Representative's visit to Rwanda and was adopted by the National Assembly on 19 January 1999. It has now been submitted to the Constitutional Court for final verification before it can be signed by the President of the Republic to enter into force after publication in the Official Gazette. This process will hopefully be concluded in February 1999.

11. In light of the need to attract the most qualified persons to the membership of the Commission and to ensure their full independence, the Special Representative welcomes the provisions in the bill that the Chairman of the Commission will have the rank of minister and that the other members have the rank of Secretary-General, and that in the exercise of their duty, they are subject only to the jurisdiction of the Supreme Court (which means, according to the President of the National Assembly, that they will enjoy immunity equivalent to that which is conferred upon members of Parliament). The Special Representative further notes with satisfaction the provision in the law which places the budget of the National Commission on Human Rights within the national budget.

12. The Special Representative was assured by the Rwandan authorities that the list of the names of the candidates to be submitted by the Government to the National Assembly was in its final stages of preparation and would soon be submitted to the National Assembly so that the process of appointment of the seven members of the Commission by the National Assembly could be completed by the end of February 1999.

13. In view of these significant and positive developments, there is urgent need for measures to be taken to support and encourage the efforts being made by the Rwandan authorities. OHCHR, should jointly with the Special Representative, find a way to bring assistance to the newly appointed members of the National Human Rights Commission by organizing a public workshop or round table which would bring together regional and international experts with representatives from the National Assembly, the Government, the judiciary and civil society in a wide public debate on how the National Human Rights Commission can be made an independent and effective institution on the basis of recognized international norms, in accordance with resolution 1998/69.

14. The Special Representative would be very pleased to be able to report on these positive developments during his oral presentation to the Commission on Human Rights in early April 1999.

15. In pursuance of the above objectives, the Special Representative appeals to the international community, both collectively and on a bilateral basis, in their cooperation with the Government of Rwanda, to extend to the National Human Rights Commission the full financial and technical support that will enable it effectively to achieve its important goals. The donor countries and other partners of Rwanda should welcome the setting up of the National Human Rights Commission under these conditions and take it as further evidence of the Government's commitment to the establishment of the rule of law, the development of a culture of human rights and the ending of a tradition of impunity in Rwanda.

16. The Special Representative notes that the presidential decree of November 1997 providing for the establishment of the National Human Rights Commission was issued together with another whose objective is to establish the Rwanda National Unity and Reconciliation Commission. The functions of the latter body are complementary to those of the National Human Rights Commission as demonstrated in article 5 (v) of the latter decree which states that one of the (prospective) functions of the Commission is "... to sensitize Rwandans on their rights, to respect other people's rights and to build among them a culture of always fighting for their rights". The Special Representative is pleased to note that in this case, too, the Government of Rwanda had decided to review the presidential decree which established the Rwanda National Unity and Reconciliation Commission and submitted a draft bill on this matter to the National Assembly. The National Assembly concluded its debate on the bill which will be promulgated as a law when signed by the President of the Republic.

C. Security conditions and human rights

17. The security situation in Rwanda is very complex as it involves the geopolitical interests of various regional as well as extraregional States. It is especially intricately intertwined with the situation in the Democratic Republic of the Congo where the civil war is providing the former militia and ex-FAR (Rwandese Armed Forces) insurgents an opportunity to fight against the Rwandan forces alongside the Congolese army and its allies. The Rwandan Vice-President and Minister of Defence, Major General Paul Kagame, is reported to have stated recently that his country's involvement in the Democratic Republic of the Congo "is a question of the survival of [the] nation and its people", adding that the security questions posed by that country were vital to the internal security of Rwanda. 5/

18. The part of the country where the security situation has been most fragile is the north-west (prefectures of Gisenyi and Ruhengeri) bordering with the Democratic Republic of the Congo. Across the border in the Kivu region of the Democratic Republic of the Congo, the population includes immigrants and refugees from both Rwandan ethnic communities. These include perpetrators of the 1994 genocide and the hostage population which they brought with them in their flight to "refugee camps". It was from this complex and volatile situation in the Kivu region that the rebellion arose which led to the overthrow of President Mobutu's regime in Zaire and the advent of Laurent-Desiré Kabila to power in the newly renamed Democratic Republic of the Congo. 6/

19. There is general consensus among independent observers in Rwanda that the level of violence and human rights violations in the north-west and elsewhere has noticeably abated since mid-1998. This may partly be due to some preventive and punitive measures which the Government in Kigali has taken in some cases regarding crimes committed by the military. There is a Military Prosecutor's Office (*Auditorat militaire*) and it endeavours to act as a deterrent to those in the military who disregard authorized modes of conduct. These measures are being taken alongside sensitization programmes, investigation and prosecution of cases and the punishment of the culprits. The setting up of the National Human Rights Commission and the National Unity and Reconciliation Commission will further improve the situation.

20. In addition to, and partly because of these measures, the Government has adopted a policy of attracting people away from rebel elements and gathering them in grouped settlements where they enjoy government protection from raids from extremist Interahamwe and infiltrators. These developments reflect a change in the Rwandan Patriotic Army's (RPA) approach. Indiscriminate firing on inhabitants and causing deaths of non-combatant civilians is being replaced by a policy of persuasion and the provision of material assistance in collective resettlement camps. The Special Representative during his last visit not only received detailed explanations on these matters, but actually travelled to the north-western prefecture of Ruhengeri where he visited the areas where the Government is attempting to provide for citizens who formerly hid in the forest in fear of both the government army and the rebels.

21. Of particular relevance in this respect is the reactivation, by virtue of Security Council resolution 1161 (1998) of 9 April 1998, of the International Commission of Inquiry, which has, among other objectives, "(a) to collect information and investigate reports relating to the sale, supply and shipment of arms and related *matériel* to former Rwandan government forces and militias in the Great Lakes region of central Africa, in violation of Security Council resolutions 918 (1994), 997 (1995) and 1011 (1995); (b) to identify parties aiding and abetting the illegal sale to, or acquisition of arms by, former Rwandan government forces and militias, contrary to the resolutions ...".

22. In its final report, submitted to the Security Council by the Secretary-General on 18 November 1998 (S/1998/1096, annex), the International Commission of Inquiry concluded:

> "The situation in the Great Lakes region is rapidly heading towards a catastrophe of incalculable consequences which requires urgent, comprehensive and decisive measures on the part of the international community. The danger of the repetition of a tragedy comparable to the Rwandan genocide of 1994, but on a subregional scale, cannot be ruled out" (para. 82).
>
> "During the past three years, the former Rwandan government forces and militia have achieved an extraordinary transformation of their position. In late 1994 the former Rwandan government forces and militia,

having been violently expelled from Rwanda by the victorious RPF [Rwandan Patriotic Front], were in serious disarray, and stood revealed as the perpetrators of a terrible genocide against unarmed civilians ... and ... remained an international pariah" (para. 84).

"... However, the changing alliances in and around the Democratic Republic of the Congo have unexpectedly worked to the advantage of the former Rwandan government forces" (para. 86).

"Persistent reports ... attest to this transformation: that the ex-FAR and Interahamwe ... have now become a significant component of the international alliance against the Congolese rebels and their presumed sponsors, Rwanda and Uganda. The Commission is convinced that the ex-FAR and Interahamwe have continued to receive arms and ammunition, both through their close links with other armed groups in Angola, Burundi, Uganda and elsewhere, and most recently, from the Government of the Democratic Republic of the Congo .... The ex-FAR and Interahamwe have now become in effect the allies of the Government of the Democratic Republic of the Congo and its allies, the Governments of Angola, Chad, Namibia and Zimbabwe. The new relationship has conferred a form of legitimacy on the Interahamwe and the ex-FAR. This is a profoundly shocking state of affairs" (para. 87).

"The free flow of arms into and within Africa is a major long-term cause of insecurity and instability in the central African subregion. It is fuelled by the presence of a multitude of rebel groups in the Great Lakes region who enjoy a large measure of governmental support" (para. 88).

"... This destructive process has been hastened by the close links that have been established among the armed groups, the armies of losers, which proliferate throughout central Africa, and of which the former Rwandan government forces are the most violent, well armed, well organized and dangerous" (para. 91).

23. The Special Representative calls attention to the complex political, economic, geopolitical and extraregional interests involved in the situation, including the illicit extraction, sale, supply and transborder shipment of minerals and other natural resources from the Democratic Republic of the Congo. The Special Representative therefore fully supports efforts at the level of the Security Council of the United Nations, the Organization of African Unity (OAU) and the Southern African Development Community (SADC) to resolve the conflicts in the Great Lakes region and to curtail the illegal traffic in arms, minerals and other resources that feeds into these conflicts.

24. Another cluster of human rights issues related to the security situation is that of the grouped settlements in the north-west of Rwanda. With the massive return of refugees, many people found their houses occupied by others. Reports from both international and local sources indicate that the Government has been endeavouring to ensure that all houses so occupied are returned to their rightful owners and that, by the end of 1998, 90 per cent of such houses had been returned. The Special Representative commends the Government's determined efforts to ensure respect for the property rights of returnees.

The critical issue of access to land, however, creates special problems that the Government is giving attention to. The many problems faced by women as a result of the genocide are complicated by the fact that those who have lost their husbands are not entitled to inherit their property, even as they are burdened with the need to support their surviving children and in-laws. The Special Representative welcomes measures being considered to alleviate the plight of widows and other affected women, in particular the draft Bill on Matrimonial Property and Succession.

25. The Government of Rwanda has been regrouping rural populations of the north-west in grouped settlements, as opposed to the traditional patterns of scattered settlements which leave the people exposed to the action of the rebel groups, while making difficult their access to services such as public education and health, electricity and water. Such a policy may be viewed as serving the strategic military interests of the Government and it is strongly reminiscent of the villagization and strategic hamlet policies which have been criticized in other countries, especially for their coercive character. At the same time, the Rwandan authorities maintain that such settlements are more conducive to development than the traditional patterns. There are reports of coercion to join these settlements, though others maintain that the people join of their own free will and that in any case they remain within their own communes. The reality is probably a mixture of the two.

26. The proper functioning of these group settlements will require considerable investments in resources for the supply of water, electricity, education and health services. Rwanda obviously does not have the necessary financial means to provide these resources. It is therefore necessary that the international community supplement Rwanda's efforts. Thus, it is in the interest of the Government of Rwanda that there be no perception of coercion in the implementation of this programme. In this respect the Special Representative commends the great efforts made singly and jointly by United Nations agencies, bilateral donors, the ICRC and NGOs to assist Rwanda in solving the problems linked to the reintegration of repatriates. He notes with satisfaction the existence of the Joint Reintegration Programming Unit pooling together the relevant resources of UNDP, UNHCR and WFP.

D. Detention, the penitentiary system and human rights

27. The situation of the judicial system is intimately linked with that of the penitentiary system and the lack of capacity to deal with criminal cases expeditiously therefore has serious human rights implications for the many persons in detention. The Government estimates that there are 10,000 persons in detention without a satisfactory case file, a number which has not been significantly reduced in the last months of 1998. In January 1998 the Government prolonged the deadline for the release of persons without case files to 31 December 1999.

28. At the end of 1998 the total number of persons in detention was estimated to be just under 125,000, which represents a slight decrease from the estimated 130,000 at the end of 1997. In the last several months the numbers have stabilized and even declined slightly after a period of steady growth in the beginning of 1998 up to a total of 130,000. According to the

ICRC in Kigali, there have been marginally more releases than new arrests since the spring of 1998, which accounts for the decrease in the total detainee population.

29. The number of persons in the communal detention centres *(cachots)* was around 36,000 at the end of the year, compared with an estimated of 40,000 in September 1998 and to a high of around 50,000 at the end of 1997. It is still considered to be decreasing as a result of the factors mentioned above, but also as a result of an increase in the number of transferrals of detainees to the prisons. By comparison, the number of detainees in the prisons, which stood at 70,000 at the end of 1997, had risen to more than 84,000 by September 1998 and was estimated by the ICRC to be at a minimum of 85,000 by the end of 1998. According to UNICEF, 4,500 of these are minors, compared with around 1,500 at the beginning of the year.

30. The conditions of detention remain deplorable in Rwanda. The prisons and *cachots* are still terribly overcrowded, but while the last year has seen some improvement in the *cachots*, overcrowding in the prisons has worsened. The sanitary conditions are still dreadful, and recently led to a typhus epidemic which caused the deaths of 45 persons in October and November in Rilima prison and required the treatment of 800 persons to bring it under control. The great killers in the prisons, however, are AIDS, tuberculosis, and sometimes malaria, the last particularly in relation to returnees from lowlands in the United Republic of Tanzania. While regular food is not provided in the *cachots*, the almost 86,000 detainees in the prisons under the Ministry of Justice alone cost Rwanda 2 per cent of its national budget.

31. The Special Rapporteur urges the Rwandan authorities to press on with the establishment of the National Human Rights Commission and urges both the Government of Rwanda and the international community to provide the National Commission with the necessary means to monitor effectively the conditions of detention in the prisons, the *cachots* and the military camps.

E. The judicial system and human rights

32. The functioning of the post-genocide judicial system continues to pose a major challenge to the Government of Rwanda, considering the atrociousness and complexity of the crimes it has to cope with, the number of accused persons and the paucity of the resources at its disposal. The Special Representative commends the authorities for having re-established a functioning judicial system in spite of the fact that its staff at all levels was reduced dramatically as a result of the genocide. Even if this had not been the case, the overwhelming size of the caseload would be beyond the ability of almost any judicial system to deal with within a reasonable time-frame. It remains the case, however, that the two human rights requirements of ensuring a fair trial as well as a speedy one, both of which are required by the international conventions ratified by Rwanda, appear to be in conflict with each other. Furthermore, the aim of re-establishing the rule of law in Rwanda is inseparably linked with the need to ensure that justice is both done and is seen to be done, with respect for the human rights of both the surviving victims of the genocide and of those accused of having committed it.

33. As in all other areas, the absence of a monitoring agency makes it difficult to register problems and record progress in the state of the judicial system, and as a consequence to assess the institutional needs at various levels. The following figures derive from government sources, if available, as well as from information provided by domestic and international agencies, organizations and observers. The Special Representative wishes to emphasize that it is in the interest of the Government of Rwanda itself to carry out a continuing survey and assessment of judicial needs, functions which would naturally fall within the scope of work of a National Human Rights Commission.

34. General progress in all areas of the justice sector has been recorded throughout 1998. The genocide trials are progressing in all prefectures, and between January and August 330 persons were tried at the Specialized Chambers of the First Instance Tribunals, as many as in all of 1997. In the last five months of 1998 around 500 persons were tried, an increase which is mainly due to the introduction of group trials, bringing the total number for 1998 up to just over 800 persons, from a total of more than 140 case files. Still, the total number of persons tried by the First Instance Tribunals remains at only around 1,000, which illustrates the immense problems with which the system is faced. 7/

35. The accused are most often assisted by an advocate and, when one is not available, they can easily obtain postponement of the hearing. The requirement that the accused be given at least eight days to prepare his defence is increasingly respected, but this period may still be too short for newly appointed defence counsels to familiarize themselves with bulky case files.

36. At the moment there are around 18 expatriate lawyers working for Avocats sans Frontières (ASF). The national Bar Association of Rwanda now comprises about 60 members, representing a doubling of the number in the last year due to the inclusion of new graduates from the University of Butare. A relatively new improvement, according to the Chairman of the Bar Association, is that a growing number of Rwandan lawyers are now accepting defence cases in the genocide trials on behalf of those accused. Some of this improvement can be attributed to a better understanding among members of the public that even those accused of genocide have the right to legal defence. Finally, a primary incentive is financial, insofar as ASF funds the work of Rwandans as well as that of their own expatriate lawyers. The Special Representative welcomes this improvement, since the availability of legal counsel is essential to the process of fair trials, and encourages all parties to contribute funds which help in providing legal defence in the genocide trials.

37. The civil parties claiming compensation in the trials are also assisted by legal counsel. A major problem, however, is that although compensation to civil claimants may be and has been awarded by the courts, the person against whom the claim has been filed will often be insolvent or unable to pay for other reasons. Also, in cases where the accused dies before or during the trial, problems arise as to whether a civil case may then be initiated against him and/or his heirs. The Special Representative notes with concern that victims of genocide must have the opportunity of redress, for the sake of justice as well as of reconciliation.

38. In general the judges of the First Instance Tribunals are reported to be more professional in their attitude, improving with practice and thereby compensating for their limited legal background, by considering the evidence impartially and by taking into account the interventions of both the prosecution and the defence. To some extent this improvement can be attributed to the influence of skilled professional counsel acting for the defence.

39. However, many problems still exist in the judiciary, most resulting from a lack of material and qualified human resources, but also from a lack of infrastructure such as transport for witnesses and accused to and from court. Most judges, magistrates and prosecutors have received only minimal training, illustrated by the fact that only around 2 per cent, or 15 out of 800, of the magistrates have a law degree, 8/ while most of the rest have received only three or six months of training.

40. One problem which is, and will probably continue to be intractable is that of the low salaries paid to members of the judiciary, as is the case for all civil servants in Rwanda. Low salaries are typically seen as an invitation to corruption and a denigration of the status of the judiciary in the eyes of the public, and a challenge to the integrity of the judicial system. The Special Representative notes this problem with concern, and urges that measures be taken to remedy it, including the possibility of topping up judicial salaries. Finally, any interference in the independence of the judiciary, particularly from the administrative organs of the State, should be resisted.

41. A new practice has been to try persons who were allegedly implicated in the same incidents in larger groups. The first of these trials was initiated on 27 February and concluded on 5 June 1998 at the Court of First Instance in Byumba, where 51 persons were tried together. During 1998 a total of more than 700 persons have been tried in groups. 9/ While group trials do not necessarily hasten the trial process as such, they help to reduce the numbers awaiting trial and may assist the better determination of individual responsibilities within the group.

42. The use of the confession and guilty plea procedure was hailed as a success after having resulted in some 7,000 confessions by September 1998. But in the last months of the year there was relatively little increase, so that the number of persons seeking to avail themselves of this opportunity now stands at about 9,000 of whom around 3,500 have been able to do so. 10/ Nevertheless, one must regret the fact that many of those who have confessed still remain in detention, in the midst of the other accused. A further consequence is that persons who plead guilty tend to implicate others, which leads to an increased burden on the investigators and prosecutors and results in more detentions. On the other hand, the testimony of those confessing may also assist the prosecution by contributing to the closure of other case files. In an example from Rilima prison in November 1998, the statements of 120 persons utilizing the confession guilty plea procedure led to the closure of more than 700 case files. 11/

43. The so-called Mobile Groups, which have replaced the earlier *Commissions de Triage*, are made up of Judicial Police officers (OPJ) and Judicial Police

inspectors (IPJ) charged to examine case files and make recommendations as to their disposition. They became effective with the training and deployment of 400 IPJs in 1998, which has also had a positive effect on the facilitation of the trial itself. Still, there is a need for further and ongoing training at this level, for instance in human rights issues, investigation methodology, and for material assistance such as support to communications and transport.

44. Linked to these mechanisms is the decision to release conditionally, after investigation, those detainees against whom it has not proved possible to file charges. A first batch of 76 persons was released in early December 1998 at Rilima commune in Nyamata prefecture. All in all, about 1,000 people were released towards the end of 1998, which is still far from fulfilling a promise given by the former Minister of Justice to release 10,000 persons by the end of the year. Nevertheless, the Special Representative warmly commends this initiative as well as the campaign of sensitization aimed at the population to avoid reprisals against the beneficiaries of this release programme, which is a significant step towards reconciliation.

45. These positive developments at the judicial level serve to reduce the number of persons in detention awaiting trial and also, in the long run, the number of post-trial detainees. They contribute to the strengthening of the rule of law in Rwanda, to reducing human suffering and the exclusion of persons from the normal bounds of society, and ultimately support the process of reconciliation. They are warmly welcomed by the Special Representative. Every effort should be made to ensure that the genocide trials before the tribunals are carried out as effectively and with as much professionalism as possible.

46. Observers report more rigour as well as more respect of the rights of the accused in the military justice system, together with greater recourse to heavier sentences, including the death penalty. The responsibility of investigating and prosecuting crimes committed by members of the armed forces, including 1,600 ex-FAR genocide cases, belongs to the *Auditorat militaire*, its Department of Military Prosecution and Investigation and its two military courts, one for soldiers and junior officers and the other for senior officers and appeals. The military authorities recognize that a good number of human rights and humanitarian law violations have been committed by members of the RPA which they attribute to a spirit of revenge among some members of the armed forces. The combination of sensitization, information, prosecution and punishment of a number of cases may have contributed to a decline in the number of violations by the military. The Special Representative strongly supports the efforts of the *Auditorat militaire* to prevent and punish violations of human rights and humanitarian law by the military and urges the international community to provide the material and technical assistance needed to continue and expand this work.

47. The Special Representative welcomes the apparent moratorium on public executions since the first series of such executions and the international outcry they provoked. He strongly recommends that the Government of Rwanda commute the death sentences to life imprisonment, for the sake of both human rights principles and the requirements of reconciliation.

48. In view of the burden placed on the domestic judicial system, the Special Representative welcomes the efforts made by the Government of Rwanda to look into the possibility of restructuring the procedure for processing the genocide cases. One of the avenues for this debate is the so-called Saturday Talks, initiated and led by the President of the Republic and involving representatives of all sectors of Government and members of civil society, including the genocide survivors. This informal forum focuses on major issues of concern to the nation, including not only the administration of justice and the detention systems, but also the economy, democracy, diplomacy and others.

49. Among the key subjects presently being discussed there is the search for alternative means of justice and reconciliation, and a subcommission has been appointed to study the *gacaca* and its applicability to genocide trials. According to government sources, detailed proposals will be presented to the Parliament and the public in the near future. These would involve transferring genocide cases falling within categories 3 and 4, and possibly also 2, 12/ to this local communal level of traditional justice, where locally elected and respected members of the community would preside over cases involving other members charged with these offences.

50. On the one hand the *gacaca* could be seen as an instrument of reconciliation, a means of sensitizing the people to the issues, an effective instrument of social cohesion, a form of consensual justice which brings the people together. The objective today would therefore be to bring the people to participate in the process of administration of justice with a view to facilitating the task of reconciliation, as well as alleviating the burden on the judicial system. The question of compensation to victims may be particularly appropriate to such forums.

51. It is, however, essential to bear in mind that the *gacaca* has traditionally been used essentially to resolve disputes and cases involving offences such as cattle rustling, and are seen more as a mechanism for dispute settlement than of criminal justice. Its application to such highly complex and emotionally charged cases as genocide would require the utmost care to safeguard the human rights of all concerned. This would include ensuring the fairness, integrity and impartiality of the tribunal members, particularly in relation to persons charged with crimes falling in category 2, who are liable to receive a prison sentence of life or, in cases where a confession has been made, between 12 and 15 years. 13/ The question of legal defence before the *gacaca* would also have to be considered. Attention must also be drawn to the fact that in 1996 a study carried out by national experts under the auspices of the Office of the High Commissioner for Human Rights stated that the *gacaca* is not competent to hear crimes against humanity, but it could be utilized for purposes of testifying in connection with reconciliation. 14/

52. Finally, apart from the logistical and administrative implications for the transfer of files, scheduling of sessions, election of members and sensitization of the population to this procedure, it would necessitate amendments to the Organic Law, as well as to the Penal Code and other laws of Rwanda. There should be no constitutional infringement and adherence to international treaties ratified by Rwanda must be respected.

F. The economic and social conditions

53. Rwanda is among the most densely populated countries in the world and also one of the poorest, with a predominantly agricultural economy which even before the genocide could not sufficiently feed its population. Some have argued that the struggle for extremely scarce resources partly contributed to ethnic strife and genocide in Rwanda, and continues to undermine any prospect of reconciliation. From this point of view, economic growth is central to any strategy to develop a culture of human rights, tolerance and amity between ethnic groups in Rwanda. The Special Representative therefore urges the international community to aid the Government of Rwanda in its efforts to promote economic development.

54. There is a pressing need to create the conditions of peace, justice and reconciliation which will enable Rwanda to exploit its natural resources for the well-being of its people. These resources include a substantial natural gas reserve under Lake Kivu. The region of the north-western prefectures of Gisenyi and Ruhengeri has such extraordinary agricultural potential that it has been described as the "breadbasket" of Rwanda. Unfortunately, until recently, this has been the area most badly affected by fighting between government troops and the armed rebel forces.

55. Another area of importance is that of providing appropriate fiscal incentives for sustainable development. Rwanda would also benefit enormously from an effective system of free public education to develop the educated and enlightened society that it needs, and a free public health service to produce the requisite healthy manpower. At the moment, there is no free education system at either primary or secondary level, in contrast to most other countries in Africa and the rest of the world. This explains in part both the low level of literacy in the country (52.7 per cent overall, 51.6 per cent for men and 44.8 per cent for women) 15/ and perhaps also the much discussed ease with which the masses can be manipulated by their leaders. Likewise, there is no free health care in Rwanda.

1. The rights of women

56. The situation of women is of particular concern, especially in the post-genocide period. Many were sexually abused and grievously injured, or even killed. Of those who survived many contracted AIDS from rape, others lost their husbands and are now single parents with many children, sometimes rejected by their in-laws, having to support these children without any means. Particularly unfair to women is the custom that they traditionally do not have the right to inherit their husbands' property. Instead, they can only act as guardians for their children while the latter are still minors. Even those who had managed to flee into exile with their husbands cannot live at home when they return to Rwanda, and are effectively deprived of the necessities of life.

57. This means, therefore, that women are in the same situation of loneliness and helplessness, whether they are widows of genocide victims or wives of detainees accused of participation in the genocide. They are assisted to the extent possible by voluntary organizations, whose work must be commended. The Special Representative welcomes the decision of the International Tribunal for Rwanda to give a broad definition to acts of sexual violence and that of the Government of Rwanda to upgrade the crime of rape

from category 4 to category 1. 16/ The Special Representative, likewise, supports the proposal of the Government of Rwanda to grant women legal access to their husband's property, in particular through the proposed Law on Matrimonial Property and Succession.

2. The rights of children

58. The plight of children in post-genocide Rwanda is equally alarming. The lack of free public education even at the primary level has been indicated above. Children have also suffered immeasurably from the genocide, many lost their parents, grandparents and other adult relatives, and the result is that small children are wandering helplessly on the streets especially in the towns in the north-west.

59. Sadly, during the genocide some children were also forced to participate in the killings, and many are presently in detention pending trial, while others have already been tried and, in some cases, been reintegrated into their communities of origin. The Special Representative commends the programmes of the Government and of international organizations aimed at addressing their special psychological and physical needs, and urges that all actions affecting them be guided by a concern for the interests of the child, as specified under the Convention on the Rights of the Child.

G. International cooperation and human rights

60. The importance of international cooperation in the development of the rule of law and a human rights culture in Rwanda cannot be overstated. The view of the Government of Rwanda on the matter is best summarized in the following words of a Rwandan judicial official: "We have received severe criticisms from some parts of the international community, but we are doing what we can. Rather than criticizing, why don't you join us and augment our efforts?"

61. The adverse effects of the Rwandan economic weakness in relation to the conditions of incarcerated persons and the judicial system have been discussed above. There are indications that after four years of providing aid to Rwanda, the international community, and in particular some donor countries, are beginning to experience fatigue, becoming less and less enthusiastic to provide more aid. However, Rwanda should not be treated as if it were an ordinary country, but rather as one which has gone through the traumatic experience of a genocide. It deserves assistance to develop a comprehensive long-term (perhaps 10-year) plan for rehabilitation and development. The Special Representative urges the international community to adopt a comprehensive long-term approach to providing technical and financial assistance to Rwanda, through the United Nations-sponsored process of thematic consultations.

62. Technical assistance from the international community is vital for Rwanda to meet the challenge of the post-genocide situation. It must also be understood that if it is to be effective, technical assistance cannot be imposed on Rwanda. For Rwanda to have a chance to meet the challenge of the post-genocide situation, technical assistance from the international community

is vital. For this assistance to be effective, continuing consultations with the leadership as well as with the civil society of Rwanda is indispensable prior to the funding of any development programmes.

63. The Special Representative noted during his fact-finding missions that almost all Rwandan interlocutors emphasized the need for material assistance instead of or in addition to the technical expertise, which they said was often available locally. In some cases, it was often suggested that the expertise, savoir-faire and experience of local experts were better adapted to the needs of the society, as well as less costly.

64. The most commonly recommended form of technical assistance, however, is training, which is required in all aspects of professional activity, and particularly in the judicial domain. Already, some efforts have been made in relation to training activities and capacity-building, but much more is still needed. There is need in particular for systematic planning of long-term training needs in human rights, including training of trainers, dissemination of information, the role of the media, education, awareness-raising and sensitization, advocacy, monitoring, etc. For the judicial and penitentiary systems, this includes the continuous training of staff at all levels. More specifically, there is a need to expand legal and magistrate education in Rwanda to a much larger pool of candidates than is presently the case. These training needs apply as well to the military justice system.

65. Another type of assistance which is badly needed according to Rwandan interlocutors is the provision of material means for the development of the rule of law and of a culture of human rights. The needs are very diverse, including basic office equipment, communications devices, and other forms of logistical support. Vehicles are essential in the judicial field. Assistance is particularly needed to raise the salaries of judges and magistrates. The Government had benefited from a fund to provide bonuses to legal staff, but apparently these funds have been exhausted. The international community should therefore consider ways of helping to enhance the remunerations of judicial employees. Finally, the promotion and dissemination of human rights principles will also require the training of journalists and other media specialists

66. Rwanda is a traumatized society. There are many who need professional help which is for the moment only available abroad. The assistance of the international community is needed in this area to facilitate access to trauma treatment, as well as for training, financing and equipping local providers of care to trauma victims.

III. CONCLUSIONS AND RECOMMENDATIONS

67. The Special Representative hopes that the present report will help to identify issues and problems in promoting the development of the rule of law and a human rights culture in Rwanda and make possible more fruitful cooperation between the Government of Rwanda and the international community in the pursuit of these objectives.

68. The Special Representative commends the contribution of the Human Rights Field Operation in Rwanda to the promotion and protection of human rights in

Rwanda and regrets that it did not prove possible for an understanding to be reached in 1998 between the Government of Rwanda and the Office of the High Commissioner for Human Rights with respect to the mandate of the Field Operation. The resulting departure of HRFOR left an important void in the human rights scene to Rwanda. It removed an important and effective source of support and information to the Special Representative during his missions to Rwanda. It also removed an important link between the Government of Rwanda and the Office of the High Commissioner for Human Rights.

69. The Special Representative considers the establishment and operation of an independent and effective National Human Rights Commission as the principal focus of his mandate. It encapsulates all three elements of that mandate. It also provides the best opportunity as well as mechanism for the resumption of collaboration between the Government of Rwanda and the Office of the High Commissioner for Human Rights. With this premise in mind, the Special Representative recalls the recommendations contained in his last report to the General Assembly (A/53/402, annex) and which are still valid, and submits the following recommendations in conformity with his mandate.

70. The Special Representative warmly welcomes the adoption by the National Assembly of Rwanda on 19 January 1999 of the law creating the National Human Rights Commission and urges its speedy approval by the Constitutional Court. The Special Representative equally welcomes the firm intention conveyed to him by the Government and by the Bureau of the National Assembly that the process of appointment of the seven members of the Commission will be completed as a matter of urgency and hopefully before the end of February 1999. The Special Representative fully supports the determination of the National Assembly to designate, among the list of names submitted by the Government, the most qualified candidates as member of the Commission on the basis of competence, dedication, independence and integrity.

71. The Special Representative urges the newly appointed members of the National Human Rights Commission to convene and organize at the earliest possible opportunity, in collaboration with the competent authorities, members of the National Assembly and of the judiciary, members of the civil society, regional and international human rights experts and related associations, the Office of the High Commissioner for Human Rights, the Special Representative, other relevant entities of the United Nations system and other interested parties, a broad round table on human rights focusing on how best to make the Commission independent and effective. The round table should in particular assist the members of the Commission in determining how best they can meet their immediate and long-term objectives and in identifying the financial and technical assistance required to enable the Commission to function effectively and independently.

72. The Special Representative encourages the Government of Rwanda and the Office of the High Commissioner for Human Rights, in the light of their convergence of views and common interest in cooperation on human rights, to enter negotiations aimed at elaborating a practical long-term plan of collaboration in technical and material assistance on human rights in Rwanda with special reference to the work of the National Human Rights Commission.

73. The Special Representative wishes to stress that the National Human Rights Commission, once established, must be given the mandate and the resources also to supervise the situation in the detention and justice systems.

74. The Special Representative urges bilateral and multilateral donors likewise to enter into negotiations with the Government of Rwanda with a view to systematic, long-term technical and material assistance to the promotion of human rights in Rwanda.

75. The Special Representative encourages the Office of the High Commissioner for Human Rights and the rest of the international community to consider favourably requests for collaboration and assistance from the Government of Rwanda for support to the National Unity and Reconciliation Commission.

76. The conditions of detention remain deplorable in Rwanda. The Special Representative is aware that the care and maintenance of the detainees constitutes a heavy burden for the naticnal budget of Rwanda, in spite of the considerable contribution of the International Committee of the Red Cross. The Special Representative commends the Government of Rwanda for its creative efforts to hasten the reduction of the caseload. In this respect, the Special Representative encourages the Government of Rwanda to persevere in these efforts and to ensure that all such measures are in conformity with established human rights standards.

77. In the light of the serious situation in the detention centres, the Special Representative recommends that everything be done to ensure compliance with the requirement that persons in detention are treated in a manner which respects their fundamental right to be free from cruel, inhuman or degrading punishment and treatment. Along these lines, serious consideration should be given to releasing, on humanitarian grounds, the sick and the elderly, minors and children for whom alternatives to imprisonment can be found, and those identified as having case files belonging to the lower categories according to the Organic Law, where the length of their pre-trial detention exceeds that of the sentence they are likely to receive.

78. The Special Representative furthermore recommends that a long-term strategy for the use of prison sentences be considered, taking into consideration any changes made in the judicial process. This should be done in order to ensure that an estimate of future needs in this area can be made to ensure that those serving long or life imprisonment can do so under satisfactory conditions.

79. The judicial system of Rwanda was for all practical purposes destroyed by the genocide. The Government has by all accounts done a remarkable job in setting up a working justice system since it took power. It is still quite far, however, from having the capacity to handle the enormous caseload of persons accused of genocide under the Organic Law. The Special Representative commends the international community for the valuable assistance it is giving to the judicial system of Rwanda and urges it to expand and systematize its assistance, including collaboration with the Office of the Military Prosecutor General, to help the country meet its enormous judicial challenges.

80. The Special Representative recommends that the Government of Rwanda, as well as its international partners, continue to strengthen the prosecution and judicial levels of the justice system. This should be done by upgrading the skills and qualifications of their members, and by ensuring that material needs are fulfilled in order for them to be able to work effectively. The Special Representative furthermore wishes to stress that a solution must be found to ensure that members of the judiciary are sufficiently paid, either by topping up their wages or by providing other support in the form of housing, transport, etc., to ensure that respect for their integrity is maintained. Finally, attention should be paid to ensuring that no form of interference in the independence of the judiciary occurs.

81. The Special Representative stresses the importance of ensuring that legal aid is provided to both civil and criminal parties, and that compensation is paid to victims of the genocide in accordance with the decisions of the courts. To this effect, funds should be contributed and managed in cooperation between Rwandese and international partners.

82. In relation to the International Tribunal in Arusha, the Special Representative recommends that everything be done to ensure a close relationship with the domestic courts as well as with the population of Rwanda, so that the international process is seen as contributing to the widest possible extent to the eradication of impunity in the country.

83. The Special Representative commends the efforts of the Rwandan Government in trying constructively to identify and implement viable alternatives to the current processing of the genocide cases, particularly in relation to ensuring popular participation and involvement. In relation to considerations on the reintroduction of the *gacaca*, the Special Representative suggests that a workshop be convened with national, African and other international experts in this field, to try to achieve the best possible solutions taking all these considerations into account.

84. The Special Representative takes note with satisfaction of the expressed determination of the Government of Rwanda to promote the development of a culture of human rights in the country. In light of the close relationship between development and such a culture, the Special Representative strongly recommends to the Government of Rwanda to promote as well the advent of a culture of economic growth and development. The Special Representative, in the same regard, urges the Government of Rwanda to give serious consideration to measures leading to the establishment of a system of free public education, at the very least at primary level, as well as a system of free public health. The Special Representative urges the international community to consider favourably government proposals aimed at achieving these objectives.

85. The Special Representative recommends renewed efforts to alleviate the plight of survivors of the genocide, with special attention to the very severe problems of women and children. In particular, the Special Representative supports the decision of the Government of Rwanda to upgrade the crime of rape from category 4 to category 1 and strongly recommends adoption by the National Assembly of the Bill on Matrimonial Property and Succession. The Special Representative also strongly urges that programmes aimed at addressing the

problems of children be always guided by a concern for the interest of the child, as provided for under the Convention on the Rights of the Child.

86. The Special Representative welcomes indications that the security and human rights situation has improved in the north-west in particular and the country in general since July 1998. The Special Representative likewise welcomes measures aimed at increasing the protection given to the civilian population of the north-west. While understanding the beneficial economic and security advantages of the group settlement pattern currently being implemented in the north-west, the Special Representative urges the Government of Rwanda to minimize the use of coercion and maximize planning, grass-roots consultations and the prior availability of services in the implementation of such schemes. The Special Representative encourages the international community to continue and expand assistance programmes aimed at improving the material condition of the affected populations.

87. The Special Representative commends the efforts of the Government of Rwanda to ensure that abandoned property that was occupied by others is promptly returned to its rightful owners after their return. Given the importance of this policy for the prospects of national reconciliation, the Special Representative commends the Government of Rwanda for its policy on the return of occupied property and encourages it to continue in this direction.

88. The Special Representative encourages the Government of Rwanda to do its utmost to minimize any element of coercion in the implementation of the grouped habitat policy. The Special Representative exhorts the international community to continue and expand its assistance to Rwanda in the housing field.

89. The Special Representative welcomes indications that the level of fear has declined in Rwandan society in the last half-year. The Special Representative welcomes further measures aimed at eliminating the fear remaining in Rwanda. This can only be fully achieved when the rule of law is well entrenched in the country. In this respect, the Special Representative encourages measures being undertaken to achieve participatory democracy, in particular the election of representatives of women at all levels.

90. The Special Representative calls the attention of the international community to the close linkage existing between the crisis in the Democratic Republic of the Congo, the security situation in the north-west of Rwanda and the human rights situation in the country. Of special importance in this respect is the final report submitted through the Secretary-General to the Security Council by the International Commission of Inquiry on the sale, supply and shipment of arms and related *matériel* in the Great Lakes region of Central Africa. The Special Representative urges the international community, including not only the Security Council but also the relevant African regional and subregional organizations, as well as influential regional and extraregional Governments, to do their utmost to promote peaceful resolution of the conflict in the Democratic Republic of the Congo.

91. In the light of the above recommendations, the Special Representative urges the international community to adopt a comprehensive and systematic approach to providing financial and technical assistance to Rwanda, bearing in

mind both the requirements of long-term development and the fact that the country has experienced a genocide combined with a continuing determination by the perpetrators to pursue their efforts at extermination. Achieving the appropriate approach requires close consultation with all elements of Rwandan society.

Notes

1/ First from 7 to 21 December 1998 to follow up on developments, then on 4 January 1999 to prepare the Special Representative's own 11-23 January 1999 mission and to assist him therein.

2/ These included the President of the National Assembly and members of the Bureau of the Assembly, the Prime Minister, the Minister for Foreign Affairs, the Minister in the Office of the President, the Minister of Gender, Family and Social Affairs, the Minister of Youth, Sports, Culture and Vocational Training, the Chairman of the Commission on National Unity and Human Rights of the National Assembly and members of the Bureau of the Commission, the President of the Supreme Court, the Prosecutor General of the Supreme Court, the Military Prosecutor General, the Adviser to the Vice-President of the Republic, the Secretary-General in the Prime Minister's Office and its Chief of Administrative, Legal, Political and External Relations Affairs, the Secretary-General in the Ministry of Justice, the Secretary-General in the Ministry of Information, the Deputy Director of the Judicial Police and the Prosecutor of the Republic for the Prefectures of Kigali Ville and Kigali Rural. Meetings were held as well with representatives of United Nations agencies and organizations, including the International Tribunal for Rwanda (ITR), with the Chief and the Deputy Chief of Delegation of the International Committee of the Red Cross (ICRC), and with the representatives of the *Association rwandaise des travailleurs chrétiens - Section feminine* (ARTCF), the *Ligue Rwandaise pour la promotion et la défense des droits de l'homme* (LIPRODHOR), the *Collectif des ligues et associations de défense des droits de l'homme au rwanda* (CLADHO), the *Association pour la défense des droits de la personne et des libertés publiques* (ADL), the *Association rwandaise pour la défense des droits de l'homme* (ARDHO), *Pro-Femmes*, and *Avocats sans frontières* (ASF).

3/ The plan called for (i) the training of national human rights monitors; (ii) human rights education programmes in both formal and informal education; (iii) providing the National Commission for Human Rights with the necessary financial and technical assistance; (iv) initiating a human rights public awareness campaign using media resources; (v) establishing a national centre for human rights as an information clearing house and training centre.

4/ United Nations Human Rights Field Operation in Rwanda, an internal review, October 1997. The activities concerned included training for judicial, administrative and military authorities, provision of material and logistical support to judicial authorities, as well as awareness campaigns, selection and training of government officials within ministries to act as

"human rights focal points", capacity-building for non-governmental organizations, and training initiatives with a focus on social and economic rights. HRFOR was indeed an important donor-assistance implementing agency.

5/ Major-General Kagame, "EU should make distinction of interests", *The New Times* (Kigali), 18-24 January 1999, pp. 1-2.

6/ David Shearer, Contextual Study: Democratic Republic of the Congo 1998 (Policy, Advocacy and Information Division, Office for the Coordination of Humanitarian Affairs, United Nations, New York, July 1998), p. 30.

7/ Office of the General Prosecutor, Kigali; Centre de Documentation et d'Information sur le Procès de Génocide, project managed by the Ligue rwandaise pour la promotion et la défense des droits de l'homme (LIPHRODOR).

8/ According to the President of the Supreme Court of Rwanda.

9/ Office of the Prosecutor General, Kigali.

10/ Ibid.

11/ Coordinator of the European Union Programme of Assistance to the Judiciary in Rwanda.

12/ According to the Organic Law of 30 August 1996.

13/ Sections 14 and 16 of the Organic Law of 1996.

14/ United Nations High Commissioner for Human Rights Field Operation in Rwanda. Gacaca. Le droit coutumier au Rwanda. Rapport final de la première phase d'enquête sur le terrain, 31 January 1996, section 2.3.2, p. 10.

15/ Ibid., p. 7.

16/ Interview.